

(c) Section 89.23 (interest, late payment penalties, and collection charges) and § 89.25 (collection by administrative offset) of this part do not apply to debts which other United States government agencies or state governments or units of general local government owe the Department (see 31 U.S.C. 3701(c)); however, other statutory or common law may provide legal authority. Neither does the proposed rule apply to recovery of debts owed by current or former employees of the United States governed by 5 U.S.C. 5514.

(d) Claims arising out of contracts that contain specific provisions relating to claims are governed by those specific provisions to the extent that those provisions comply with existing law and with 4 CFR chapter II.

(e) As used in this part, the terms debt and claims are interchangeable and have the meaning defined in 4 CFR 101.2(a). A debtor's liability arising out of a particular incident or adjudication exclusive of interest, administrative costs, and late payment penalties, is a single claim.

(f) Except as provided in paragraphs (b), (c) and (d) of this section the provisions of this part shall apply to the collection of all debts and claims owed to any DOT operating element. A claim arising from the assessment of civil penalty or fine is not subject to the procedures of this subpart until the claim has been reduced to a liquidated debt by a signed settlement agreement, a court order or judgment, or a final administrative determination.

#### **§ 89.5 Delegations of authority.**

The functions, powers, and duties of the Secretary of Transportation to attempt collection of claims, to compromise claims of the United States not exceeding \$100,000 (excluding interest) and to suspend and terminate action to collect such claims are delegated to:

(a) The Assistant Secretary for Administration with respect to claims arising out of the activities of, or referred to, the Office of the Secretary; and

(b) The heads of other DOT operating elements with respect to claims arising

out of the activities of, or referred to, their organizations.

[53 FR 51238, Dec. 21, 1988, as amended at 58 FR 6898, Feb. 3, 1993]

#### **§ 89.7 Exceptions to delegated authority.**

The authority delegated under § 89.5 does not apply to any claim:

(a) As to which there is an indication of (1) fraud; (2) the presentation of a false claim; or (3) misrepresentation on the part of the debtor or any other party having an interest in the claim;

(b) Based on tax statutes; or

(c) Arising from an exception made by the General Accounting Office in the account of an accountable officer.

#### **§ 89.9 Redelegation.**

Each officer to whom authority is delegated under § 89.5 may redelegate and authorize successive redelegations of the authority within the organization under his or her jurisdiction.

#### **§ 89.11 Standards for exercise of delegated authority.**

The authority delegated under § 89.5 shall be exercised in accordance with the standards for the collection and compromise of claims and for the suspension and termination of action to collect claims promulgated by the United States General Accounting Office and the United States Department of Justice, and published at 4 CFR chapter II, as those standards may be amended.

#### **§ 89.13 Documentary evidence of compromise.**

A compromise of any claim is not final or binding on the United States unless it is in writing, signed by an officer or employee authorized to compromise that claim.

#### **§ 89.15 Regulations, reports, and supporting documentation.**

(a) Each officer to whom authority is delegated under § 89.5 may promulgate regulations for the exercise of that authority within his or her organization. These regulations shall be revised, as necessary, to conform to any amendments to this part.

(b) Each officer to whom authority is delegated under § 89.5 shall furnish the

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following information to the Assistant Secretary for Administration:

(1) A copy of each redelegation of that authority.

(2) A semiannual report listing those claims compromised or with respect to which collection action has been suspended or terminated, specifying the name of the debtors, the amount of the claim, the nature of the claim, the type of action taken, and the general basis for the action taken.

(3) A copy of any implementing regulations governing the exercise of the authority delegated under § 89.5, and any amendments to those regulations.

(c) Each officer or employee to whom the Secretary's authority has been delegated or redelegated, before exercising such authority, shall acquire sufficient documentation to demonstrate that the action taken is in the best interests of the United States. This documentation will be retained with and treated as part of the file concerning the debt.

(d) The failure of any officer or employee to comply with this section does not limit or impair his or her exercise of authority.

### Subpart B—Collection of Claims

#### § 89.21 Administrative collection.

Except as provided differently by the DOT operating elements pursuant to § 89.3:

(a) DOT shall send a debtor a total of three progressively stronger written demands at not more than 30-day intervals, unless a response to the first or second demand indicates that a further demand would be futile or the debtor's response does not require rebuttal, or other pertinent information indicates that additional written demands would be unnecessary.

(b) The initial written demand for payment (and the notice of offset under § 89.25) shall inform the debtor of:

(1) The basis for the indebtedness and the debtor's right to obtain review (see § 89.21(f) for details on review).

(2) The amount of the claim;

(3) That domestic and overseas payment in excess of ten thousand dollars or more shall be made by wire transfer through the Federal Reserve communications, commonly known as

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Fedwire, to the account of the U.S. Treasury in accordance with the instructions provided in the demand letter; payments originating in foreign countries shall be made by wire transfer to the extent practicable.

(4) The delinquency date, or the date by which payment is to be made (30 days from the date of mailing or hand delivery of the initial demand letter);

(5) The standard for interest, penalties, and administrative charges in accordance with 31 U.S.C. 3717, if payment is not received by the due date (see § 89.23 for details regarding interest, collection charges, and late payment penalty charges);

(6) Where a notice of offset is concerned, the right to make voluntary payment before collection by offset begins (see § 89.25).

(7) The possible reporting of the claim to commercial credit bureaus and consumer reporting agencies; however a notice of offset should not include this warning.

(8) The possibility that DOT will forward the claim to a collection agency, the General Accounting Office, the Department of Justice, or private counsel contracting with the Department of Justice for collection; however a notice of offset should not include this warning.

(c) If the debtor fails to respond to the demands for payment by the due date specified in the notice, the Department may take further action under this part or the FCCS under 49 CFR parts 101 through 105, pursuant to 31 U.S.C. 3701–3720A. These actions may include reports to commercial credit bureaus, consumer reporting agencies, contracts with commercial collection agencies, revocation of licenses, or the use of administrative offset, as authorized in 31 U.S.C. 3701–3720A.

(d) DOT may collect by administrative offset, (see § 89.25, Collection by administrative offset), if the debtor:

(1) Has not made payment by the payment due date;

(2) Has not requested a review of the claim within the agency as set out in paragraph (f) of this section; or

(3) Has not made an arrangement for payment by the payment due date;

(e) Except for information that may properly be withheld under 49 CFR part